

HOUSE BILL NO. 53

INTRODUCED BY N. BIXBY

BY REQUEST OF THE DEPARTMENT OF JUSTICE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT; REQUIRING DISTRICT COURTS TO ENFORCE TRIBAL COURT CUSTODY ORDERS IN CERTAIN CIRCUMSTANCES; AMENDING SECTION 40-7-135, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 40-7-135, MCA, is amended to read:

"40-7-135. Application to Indian tribes. (1) A child custody proceeding that pertains to an Indian child as defined in the Indian Child Welfare Act, 25 U.S.C. 1901, et seq., is not subject to this chapter to the extent that it is governed by the Indian Child Welfare Act.

(2) A court of this state shall treat a tribe as if it were a state of the United States for the purpose of applying 40-7-101, 40-7-103, 40-7-105 through 40-7-110, 40-7-112, 40-7-119, 40-7-125, 40-7-134 through 40-7-140, and part 2 of this chapter.

(3) A child custody determination made by a tribe ~~under factual circumstances~~ in substantial conformity with the jurisdictional standards of this chapter must be recognized and enforced under part 3 of this chapter. A tribal court child custody determination that is certified by the same tribe's tribal court judge as final and effective must be considered as being in substantial conformity with the jurisdictional standards of this chapter.

(4) A CERTIFICATE SUBSTANTIALLY SIMILAR TO THE FOLLOWING MUST BE ACCEPTED AS VALID UNDER THIS SECTION:

TRIBAL COURT CHILD CUSTODY CERTIFICATION OF PRESIDING TRIBAL COURT JUDGE

I,, TRIBAL COURT JUDGE OF THE TRIBE, DO HEREBY CERTIFY THAT I PRESIDED OVER THE MATTER OF
(NAME OF PROCEEDING FOR ORDER SOUGHT TO BE ENFORCED)
AND THAT THE ATTACHED ORDER IS ENTITLED TO BE TREATED AS AN ORDER OF A STATE OF THE UNITED STATES UNDER THE UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT, TITLE 40, CHAPTER 7, MONTANA CODE

1 ANNOTATED. THE DETERMINATION WAS MADE IN A PROCEEDING THAT MEETS THE REQUIREMENTS OF SECTION
2 40-7-135(3), MCA.

3
4 TRIBAL COURT JUDGE

5
6 DATE"
7

8 NEW SECTION. Section 2. Contested validity or enforcement of tribal court custody order. (1)

9 A party against whom a tribal court custody determination is sought to be enforced under this chapter may
10 contest the validity or enforcement of the order ONLY by proving one or more of the following defenses:

11 (a) AT THE TIME the issuing tribal court ISSUED THE ORDER, THE TRIBAL COURT lacked personal subject
12 matter jurisdiction over the contesting party PARTIES AND CHILDREN;

13 (b) the order was obtained by fraud;

14 (c) the order has been vacated, suspended, or modified by a later order of a court of competent
15 jurisdiction;

16 (d) the issuing tribal court has stayed the order pending appeal;

17 (e) there is a defense under the laws of this state to the remedy sought; or

18 (f) the order was not certified as required by 40-7-135.

19 (2) If a party presents evidence establishing a full or partial defense under subsection (1), the district
20 court may stay enforcement of the order; AND continue the proceeding to permit production of additional relevant
21 evidence, ~~and issue other appropriate orders~~. An uncontested portion of the order may be enforced by all
22 remedies available under the laws of this state.

23 (3) IF THE DISTRICT COURT FINDS THAT THE TRIBAL COURT HAD PERSONAL JURISDICTION OVER THE PARTIES AND
24 CHILDREN AT THE TIME THE ORDER WAS ISSUED BUT ENFORCEMENT OF THE ORDER WOULD VIOLATE THE PUBLIC POLICY
25 OF THE STATE, THE DISTRICT COURT SHALL DISMISS THE CASE CONTESTING ENFORCEMENT WITHOUT PREJUDICE. THE
26 DISTRICT COURT MAY NOT SUBSTITUTE ITS JUDGMENT FOR THAT OF THE TRIBAL COURT ON THE MERITS OF THE CASE.

27 ~~(3)(4)~~ (4) If the contesting party does not establish a defense under subsection (1) to the validity or
28 enforcement of the order, the district court shall issue an order confirming the contested order AND DIRECTING
29 APPROPRIATE ENFORCEMENT OF THE ORDER.
30

NEW SECTION. **Section 3. Notification to tribal governments.** The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

NEW SECTION. **Section 4. Codification instruction.** [Section 2] is intended to be codified as an integral part of Title 40, chapter 4, and the provisions of Title 40, chapter 4, apply to [section 2].

NEW SECTION. **Section 5. Effective date.** [This act] is effective on passage and approval.

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